

SERIAL 05189 RFP ELECTRONIC DATA BASE PRODUCTS AND SERVICES
Learning Express Contract

DATE OF LAST REVISION: October 05, 2006 CONTRACT END DATE: May 31, 2016

CONTRACT PERIOD THROUGH MAY 31, 2016

TO: All Departments

FROM: Department of Materials Management

SUBJECT: Contract for **ELECTRONIC DATA BASE PRODUCTS AND SERVICES**

Attached to this letter is published an effective purchasing contract for products and/or services to be supplied to Maricopa County activities as awarded by Maricopa County on **October 05, 2006 (Eff. 11/01/06)**.

All purchases of products and/or services listed on the attached pages of this letter are to be obtained from the vendor holding the contract. Individuals are responsible to the vendor for purchases made outside of contracts. The contract period is indicated above.

Wes Baysinger, Director
Materials Management

DL/mm
Attach

Copy to: Clerk of the Board
Susan Varscsak, Library District
Mirheta Muslic, Materials Management



CONTRACT PURSUANT TO RFP

SERIAL 05189-RFP

This Contract is entered into this 1st day of November, 2006 by and between Maricopa County Library District ("District"), a political subdivision of the State of Arizona, and LearningExpress, LLC, ("Contractor") for the licensing of electronic data base products and services.

1.0 TERM

- 1.1 This Contract is for a term of ten (10) years, beginning on the 1st day of November, 2006 and ending the 31st day of May, 2016.
- 1.2 The District may, at its option and with the agreement of the Contractor, extend the period of this Contract for additional terms up to a maximum of fifteen (15) years, (or at the District's sole discretion, extend the contract on a month-to-month basis for a maximum of six (6) months after expiration). The District shall notify the Contractor in writing of its intent to extend the Contract period at least thirty (30) calendar days prior to the expiration of the original contract period, or any additional term thereafter.

2.0 PAYMENT

- 2.1 As consideration for performance of the duties described herein, District shall pay Contractor the sum(s) stated in Exhibit "A" upon the District's receipt of a properly completed invoice. Invoices shall contain the following information:
- 2.2 INVOICES AND PAYMENTS:
 - 2.2.1 The Contractor shall submit two (2) legible copies of their detailed invoice before payment(s) can be made. At a minimum, the invoice must provide the following information:
 - 2.2.1.1 Company name, address and contact
 - 2.2.1.2 District bill-to name and contact information
 - 2.2.1.3 Contract Serial Number
 - 2.2.1.4 District purchase order number
 - 2.2.1.5 Invoice number and date
 - 2.2.1.6 Payment terms
 - 2.2.1.7 Date of service or delivery
 - 2.2.1.8 Quantity (number of days or weeks)
 - 2.2.1.9 Contract Item number(s)
 - 2.2.1.10 Description of Purchase (product or services)
 - 2.2.1.11 Pricing per unit of purchase
 - 2.2.1.12 Extended price
 - 2.2.1.13 Arrival and completion time (if applicable)
 - 2.2.1.14 Total Amount Due

Problems regarding billing or invoicing shall be directed to the using agency as listed on the Purchase Order.

2.2.2 Payment will be made to the Contractor by Accounts Payable through the Maricopa County Vendor Express Payment Program. This is an Electronic Funds Transfer (EFT) process. After Award the Contractor shall fill out an EFT Enrollment form (to be provided by the Procurement Officer) or as located on the County Department of Finance Website as a fillable PDF document (www.maricopa.gov/finance/).

2.2.3 EFT payments to the routing and account numbers designated by the Contractor will include the details on the specific invoices that the payment covers. The Contractor is required to discuss remittance delivery capabilities with their designated financial institution for access to those details.

3.0 DUTIES

3.1 The Contractor shall perform all duties stated in Exhibit "B."

3.2 The Contractor shall perform services at the location(s) and time(s) stated in Exhibit "B," or as otherwise directed in writing.

3.3 During the Contract term, District shall provide Contractor's personnel with adequate workspace for consultants and such other related facilities as may be required by Contractor to carry out its contractual obligations.

4.0 TERMS & CONDITIONS

4.1 INDEMNIFICATION:

To the fullest extent permitted by law, Contractor shall defend, indemnify, and hold harmless District, its agents, representatives, officers, directors, officials, and employees from and against all claims, damages, losses and expenses, including, but not limited to, attorney fees, court costs, expert witness fees, and the cost of appellate proceedings, relating to, arising out of, or alleged to have resulted from the negligent acts, errors, omissions or mistakes relating to the performance of this Contract. Contractor's duty to defend, indemnify and hold harmless District, its agents, representatives, officers, directors, officials, and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury, sickness, disease, death, or injury to, impairment, or destruction of property, including loss of use resulting there from, caused by any negligent acts, errors, omissions or mistakes in the performance of this Contract including any person for whose acts, errors, omissions or mistakes Contractor may be legally liable.

The amount and type of insurance coverage requirements set forth herein will in no way be construed as limiting the scope of the indemnity in this paragraph.

The scope of this indemnification does not extend to the sole negligence of District.

4.2 DISTRICT RESPONSIBILITIES:

District agrees and warrants that it will use the Products in strict compliance with all applicable Laws and further acknowledges that it is District's sole responsibility to determine the applicability of such Laws.

4.3 COPYRIGHT:

Contractor represents that it has the full right, power and authority to enter into this Contract and to grant the rights granted herein and that District's inclusion and use of the Products will not violate any rights of any kind or nature whatsoever of any third party.

4.4 PROCUREMENT CARD ORDERING CAPABILITY:

It is the intent of District to utilize a MasterCard Procurement Card, to place and make payment for orders under the Contract.

4.5 INTERNET CAPABILITY:

It is the intent of District at its option, to utilize the Internet to communicate and to place orders under this Contract.

4.6 NOTICES:

All notices given pursuant to the terms of this Contract shall be addressed to:

For District:

Maricopa County Library District
Attn: Director
17811 N. 32nd Street
Phoenix, Arizona 85032
Telephone: 602-506-5751
Facsimile: 602-506-4689
E-Mail: harrycourtright@mclld.maricopa.gov

For Contractor:

LearningExpress, LLC
Barry Lippman, President
55 Broadway, 8th Floor
New York, New York 10006
Telephone: 212-995-2566 Ext. 6404
Facsimile: 212-995-5512
E-Mail: BLippman@LearningExpressLLC.com

4.7 REQUIREMENTS CONTRACT:

4.7.1 Contractor signifies its understanding and agreement by signing this document that this Contract is a requirements contract. This Contract does not guarantee any purchases will be made (minimum or maximum). Orders will only be placed when District identifies a need and issues a purchase order or a written notice to proceed.

4.7.2 District reserves the right to cancel purchase orders or notice to proceed within a reasonable period of time after issuance. Should a purchase order or notice to proceed be canceled, the District agrees to reimburse the Contractor for actual and documented costs incurred by the Contractor. The District will not reimburse the Contractor for any avoidable costs incurred after receipt of cancellation, or for lost profits, or shipment of product or performance of services prior to issuance of a purchase order or notice to proceed.

4.7.3 Cancellation of purchase orders shall be in writing.

4.8 PRICE ADJUSTMENTS:

Any requests for reasonable price adjustments must be submitted sixty (60) days prior to the Contract expiration date. Requests for adjustment in cost of labor and/or materials must be supported by appropriate documentation. If District agrees to the adjusted price terms, District shall issue written approval of the change. The reasonableness of the request will be determined by comparing the request with the (Consumer Price Index) or by performing a market survey.

4.9 TERMINATION FOR CONVENIENCE:

The District reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the District without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the District. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the District upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination.

4.10 TERMINATION FOR DEFAULT:

4.10.1 In addition to the rights reserved in the Contract, the District may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.

4.10.2 Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the District on demand.

4.10.3 The District may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the District for any excess costs incurred by the District in procuring materials or services in substitution for those due from the Contractor.

4.10.4 The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.

4.11 STATUTORY RIGHT OF CANCELLATION FOR CONFLICT OF INTEREST:

Notice is given that pursuant to A.R.S. §38-511 the District may cancel this Contract without penalty or further obligation within three years after execution of the contract, if any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the District is at any time while the Contract or any extension of the Contract is in effect, an employee or agent of any other party to the Contract in any capacity or consultant to any other party of the Contract with respect to the subject matter of the Contract. Additionally, pursuant to A.R.S §38-511 the District may recoup any fee or commission paid or due to any person significantly involved in initiating, negotiating, securing, drafting or creating the contract on behalf of the District from any other party to the contract arising as the result of the Contract.

4.12 OFFSET FOR DAMAGES;

In addition to all other remedies at law or equity, the District may offset from any money due to the Contractor any amounts Contractor owes to the District for damages resulting from breach or deficiencies in performance under this contract.

4.13 ADDITIONS/DELETIONS OF SERVICE:

The District reserves the right to add and/or delete products and/or services provided under this Contract. If a requirement is deleted, payment to the Contractor will be reduced proportionately to the amount of service reduced in accordance with the proposal price. If additional services and/or products are required from this Contract, prices for such additions will be negotiated between the Contractor and the District.

4.14 SUBCONTRACTING:

The Contractor may not assign this Contract or subcontract to another party for performance of the terms and conditions hereof without the written consent of the District, which shall not be unreasonably withheld. All correspondence authorizing subcontracting must reference the Proposal Serial Number and identify the job project.

4.15 AMENDMENTS:

All amendments to this Contract must be in writing and signed by both parties.

4.16 RETENTION OF RECORDS:

The Contractor agrees to retain all financial books, records, and other documents relevant to this Contract for five (5) years after final payment or until after the resolution of any audit questions which could be more than five (5) years, whichever is longer. The District, Federal or State auditors and any other persons duly authorized by the Department shall have full access to, and the right to examine, copy and make use of, any and all said materials.

If the Contractor's books, records and other documents relevant to this Contract are not sufficient to support and document that requested services were provided, the Contractor shall reimburse District for the services not so adequately supported and documented.

4.17 AUDIT DISALLOWANCES:

If at any time, District determines that a cost for which payment has been made is a disallowed cost, such as overpayment, District shall notify the Contractor in writing of the disallowance. District shall also state the means of correction, which may be but shall not be limited to adjustment of any future claim submitted by the Contractor by the amount of the disallowance, or to require repayment of the disallowed amount by the Contractor.

4.18 ALTERNATIVE DISPUTE RESOLUTION:

4.18.1 After the exhaustion of the administrative remedies provided in the Maricopa County Procurement Code, any contract dispute in this matter is subject to compulsory arbitration. Provided the parties participate in the arbitration in good faith, such arbitration is not binding and the parties are entitled to pursue the matter in state or federal court sitting in Maricopa County for a de novo determination on the law and facts. If the parties cannot agree on an arbitrator, each party will designate an arbitrator and those two arbitrators will agree on a third arbitrator. The three arbitrators will then serve as a panel to consider the arbitration. The parties will be equally responsible for the compensation for the arbitrator(s). The hearing, evidence, and procedure will be in accordance with Rule 74 of the Arizona Rules of Civil Procedure. Within ten (10) days of the completion of the hearing the arbitrator(s) shall:

4.18.1.1 Render a decision;

4.18.1.2 Notify the parties that the exhibits are available for retrieval; and

4.18.1.3 Notify the parties of the decision in writing (a letter to the parties or their counsel shall suffice).

4.18.2 Within ten (10) days of the notice of decision, either party may submit to the arbitrator(s) a proposed form of award or other final disposition, including any form of award for attorneys' fees and costs. Within five (5) days of receipt of the foregoing, the opposing party may file objections. Within ten (10) days of receipt of any objections, the arbitrator(s) shall pass upon the objections and prepare a signed award or other final disposition and mail copies to all parties or their counsel.

4.18.3 Any party which has appeared and participated in good faith in the arbitration proceedings may appeal from the award or other final disposition by filing an action in the state or federal court sitting in Maricopa County within twenty (20) days after date of the award or other final disposition. Unless such action is dismissed for failure to prosecute, such action will make the award or other final disposition of the arbitrator(s) a nullity.

4.19 SEVERABILITY:

The invalidity, in whole or in part, of any provision of this Contract shall not void or affect the validity of any other provision of this Contract.

4.20 RIGHTS IN DATA:

The District shall own have the use of all data and reports resulting from this Contract without additional cost or other restriction except as provided by law. Each party shall supply to the other party, upon request, any available information that is relevant to this Contract and to the performance hereunder.

4.21 INTEGRATION:

This Contract represents the entire and integrated agreement between the parties and supersedes all prior negotiations, proposals, communications, understandings, representations, or agreements, whether oral or written, express or implied.

4.22 GOVERNING LAW:

This Contract shall be governed by the laws of the state of Arizona. Venue for any actions or lawsuits involving this Contract will be in Maricopa County Superior Court or in the United States District Court for the District of Arizona, sitting in Phoenix, Arizona.

4.23 ENTIRE AGREEMENT:

This contract document constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes any prior agreements between the parties regarding such subject matter.

4.24 ORDER OF PRECEDENCE:

In the event of a conflict in the provisions of this Contract and Contractor's license agreement, the terms of this Contract shall prevail.

4.25 INCORPORATION OF DOCUMENTS:

The following are to be attached to and made part of this Contract.

4.25.1 Exhibit A, Pricing.

4.25.2 Exhibit B, Scope of Work

IN WITNESS WHEREOF, this Contract is executed on the date set forth above.

CONTRACTOR

AUTHORIZED SIGNATURE

PRINTED NAME AND TITLE

ADDRESS

DATE

MARICOPA COUNTY LIBRARY DISTRICT

BY: _____
CHAIRMAN, BOARD OF DIRECTORS

DATE

ATTESTED:

CLERK OF THE BOARD

DATE

APPROVED AS TO FORM:

DEPUTY MARICOPA COUNTY ATTORNEY

DATE

EXHIBIT A

SERIAL 05189-RFP

PRICING SHEET: NIGP 95635, B0604225

BIDDER NAME:	<u>LearningExpress, LLC</u>
VENDOR # :	<u>W000008167 X</u>
BIDDER ADDRESS:	<u>55 Broadway, 8th Floor, New York, New York 10006</u>
P.O. ADDRESS:	<u></u>
BIDDER PHONE #:	<u>212-995-2566</u>
BIDDER FAX #:	<u>212-995-5512</u>
COMPANY WEB SITE:	<u>www.LearningExpressLLC.comRosettaStone.com</u>
COMPANY CONTACT (REP):	<u>Mark Ross 646-274-6423</u>
E-MAIL ADDRESS (REP):	<u>Mross@LearningExpressLLC.com</u>

WILLING TO ACCEPT FUTURE SOLICITATIONS VIA EMAIL: X YES NO

ACCEPT PROCUREMENT CARD: X YES NO

REBATE (CASH OR CREDIT) FOR UTILIZING PROCUREMENT CARD: YES X NO
 % REBATE

(Payment shall be made within 48 hrs utilizing the Purchasing Card)

INTERNET ORDERING CAPABILITY: YES X NO % DISCOUNT X YES

OTHER GOV'T. AGENCIES MAY USE THIS CONTRACT: X YES X NO

PAYMENT TERMS: BIDDER IS REQUIRED TO PICK ONE OF THE FOLLOWING.
TERMS WILL BE CONSIDERED IN DETERMINING LOW BID.
FAILURE TO CHOOSE A TERM WILL RESULT IN A DEFAULT TO NET 30.
BIDDER MUST INITIAL THE SELECTION BELOW.

NET 10

NET 15

NET 20

NET 30

NET 45

NET 60

NET 90

2% 10 DAYS NET 30 X

1% 10 DAYS NET 30

2% 30 DAYS NET 31

1% 30 DAYS NET 31

5% 30 DAYS NET 31

INDICATE PERCENTAGE OF M/WBE PARTICIPATION
IF ANY HERE

0%

PLEASE INDICATE HOW YOU HEARD ABOUT THIS SOLICITATION:

NEWSPAPER ADVERTISEMENT

MARICOPA COUNTY WEB SITE

PRE-SOLICITATION NOTICE (POST CARD)

E-MAIL

X OTHER (PLEASE SPECIFY)

1.0 PRICES FOR MARICOPA COUNTY ONLY

<u>ITEM DESCRIPTION</u>	<u>PRICE LIST / CATALOG DATED:</u> <u>9/14/2006</u>		<u>% OFF LIST</u>
	<u>List Price</u>	<u>Cost</u>	
1.1 Learning Express Tests and Courses, Job and Career, Writing Improvement Program and Career Test Preparation (Does not include Delmar Products)	<u>\$124,000.00</u>	<u>\$111,600.00</u>	<u>10%</u>
1.2 Delmar Products	<u>\$48,695.00</u>	<u>\$38,956.00</u>	<u>20%</u>
ASE Automotive	<u>\$ 9,739.00</u>		
Journeyman Electrician	<u>\$ 9,739.00</u>		
Milady	<u>\$ 9,739.00</u>		
Nursing CE	<u>\$19,478.00</u>		

2.0 PRICES STATEWIDE (INCLUDING MARICOPA COUNTYT)

<u>ITEM DESCRIPTION</u>	<u>PRICE LIST / CATALOG DATED:</u> <u>9/14/2006</u>		<u>% OFF LIST</u>
	<u>List Price</u>	<u>Cost</u>	
2.1 Learning Express Tests and Courses, Job and Career, Writing Improvement Program and Career Test Preparation (Does not include Delmar Products)	<u>\$205,000.00</u>	<u>\$164,000.00</u>	<u>20%</u>
2.2 Delmar Products	<u>\$48,695.00</u>	<u>\$38,956.00</u>	<u>20%</u>
ASE Automotive	<u>\$ 9,739.00</u>		
Journeyman Electrician	<u>\$ 9,739.00</u>		
Milady	<u>\$ 9,739.00</u>		
Nursing CE	<u>\$ 19,478.00</u>		

EXHIBIT B

1.0 INTENT:

- 1.1 This Contract is for electronic products and services. Products and services provided under this Contract will also become accessible for licensing by other public libraries throughout the State of Arizona. Contractor's products and services shall allow for unlimited, simultaneous access for users.
- 1.2 New contractors may be added to the County's contract(s) for these services during the term of this Contract as appropriate in order to meet the continuing needs of the Library District.

2.0 SCOPE OF SERVICES:

- 2.1 Contractor shall make the following Core Subject Areas available, via the internet, to all public libraries located within Maricopa County from inside the libraries and, if applicable, via remote customer access. Maricopa County, in partnership with other government entities, has the option of extending this service to all public libraries throughout the State of Arizona. Additional Core Subject Areas may be added to this Contract as funding becomes available.

- 2.1.1 Learning Express tests and courses, Job and Career, Writing Improvement Program and Career Test Preparation (does not include Delmar products).

- 2.1.2 Delmar Products (including):

- 2.1.2.1 ASE Automotive;

- 2.1.2.2 Journeyman Electrician;

- 2.1.2.3 Milady; and

- 2.1.2.4 Nursing CE.

- 2.2 **COPYRIGHT:**

The Contractor is responsible to legally obtain copyright to items offered in the products.

- 2.3 **TAX:**

- 2.3.1 Libraries in the State of Arizona are exempt from any out-of-state tax on the purchase of books, electronic information and audio/visual materials. Tax Exempt numbers are not issued by the County. A copy of the Arizona Law providing this exemption will be provided at the time of account set-up.

- 2.3.2 An in-state contractor may only charge the city sales tax for the city within which the Contractor is located. The exception to this is where the Arizona city has also exempted these taxes.

- 2.3.3 No tax on labor services:

- 2.4 **SERVICE DELIVERY:**

It shall be the Contractor's responsibility to meet the service delivery requirements. Maricopa County reserves the right to obtain services on the open market in the event the Contractor fails to make delivery and any price differential will be charged against the Contractor.

2.5 TRAINING:

Contractor will provide training, at no additional cost, to Library staff in the use of Contractor's online databases at locations agreed upon by the individual library system and Contractor, at mutually agreed upon dates and times, on an as-needed basis. Equipment, location of training and publicity of training will be the responsibility of the individual library system.

Additional training will be conducted annually or when there is a major change to the database(s) user interface upon request at no additional cost to County.

2.6 STATISTICS:

Contractor shall provide or make available monthly usage statistics per library at no additional cost to the libraries.

2.7 REMOTE ACCESS:

Contractor shall provide remote access to authenticated library users.

2.8 SIMULTANEOUS USERS:

Contractor shall provide unlimited, simultaneous users access.

LEARNING EXPRESS, LLC, 55 BROADWAY, 8TH FLOOR, NEW YORK, NY 10006

PRICING SHEET: NIGP 95635/ B0604225

Terms:	2% 10 Days Net 30
Vendor Number:	W000008167 X
Telephone Number:	800/295-9556
Fax Number:	212/995-5512
Contact Person:	Barry Lippman
E-mail Address:	BLippman@LearningExpressLLC.com
Company Web Site:	www.lerningexpressllc.com www.rosetastone.com
Contract Period:	To cover the period ending May 31, 2016.